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THE BEGINNINGS OF GOVERNMENT IN THE DISTRICT.

By W. B. BRYAN.

(Read before the Society March 10, 1902.)

The grant of power of "exclusive legislation" over the district selected as the permanent seat of government had but one meaning to the framers of the Constitution of the United States. It meant placing the Federal Government on a footing of independence in the territory set apart for its use. There it should be supreme, its dignity and authority not being subjected either to the caprices or the weakness of any state or local power. The determination which thus found expression in a constitutional provision was lifted from the range of a mere theory by the well-known incident in the history of Congress, when an appeal for protection to the authorities of the state of Pennsylvania went unheeded and the national legislature thereupon retired to a place where its deliberations were not threatened with interruption.

The revolt of certain troops of the Pennsylvania line and their menacing appearance surrounding the place where Congress was assembled occurred on the twenty-first of June, 1783. Three days later that body was in session in Princeton and, on the first of September, received a message from the general assembly of Pennsylvania inviting it to return to Philadelphia. In this paper appears the first reference to the subject of conferring upon Congress the right of jurisdiction over the place where the permanent seat of government might

be located. It was evidently taken for granted that, after the occurrence of a few weeks before, something of the sort was expected and so the state legislature asked Congress what jurisdiction it might deem necessary to have over the proposed site. This question having thus been raised, as it seemed proper by a body whose hesitating remissness had led to the humiliating flight, it was at once recognized as not only of importance but as no doubt "involving some novel considerations." So the entire matter was referred to a committee and subsequently a report was made to the committee of the whole house. One session was spent in discussing the report and then the committee adjourned without action. There is no record of a further session being held.*

This was in September, 1783. Early in October is recorded the first of the many resolutions offered during the seven years following, that the subject of the selection of a capital site was before Congress. This resolution contained a clause providing that "the right of soil and an exclusive or such other jurisdiction as Congress may direct shall be vested in the United States." Practically the same language was made a part of all subsequent resolutions so that it is quite evident the citizens of the various states offering territory for such a purpose were willing that Congress should have territorial jurisdiction.

While this subject was pending in Congress, the convention that framed the Constitution finished its work and for the reasons as set forth in the debates and given above and in undoubted response to the sentiment of the day the clause was inserted giving to the national body the power of exclusive legislation. In the same section of that instrument similar powers are given to

* Acts of Congress in relation to the District, W. A. Davis, 1831, p. 10.

Congress over all territory held by the United States for use as forts, arsenals, navy yards, etc.

The origin of the idea of the capital of the nation located in a district to be under exclusive control of the national body of law-makers is therefore easily traced. Even after the passage of the law of 1790, which fixed the location and provided that the Government should be removed there ten years later, there is no suggestion that either Congress or the public viewed this question from any other point of view than that of the national. As to what appears to us to-day important phases of the situation, namely, the scope of such a unique grant of power and how it could be exercised in a form of government based on the principle of the representation of the taxed, seemed not to have troubled the minds of the Fathers. Although the entire District, by the act of 1790, is spoken of as having been selected as the seat of government and not any part of it and while the act made no specific provision for the founding of a city, yet undoubtedly there was no other notion in the minds of men at that time but that the place chosen as the home of the National Government would become the center of a large population.

A similar idea prevailed also during the years this question was before Congress, which explains in large part the strong and at times bitter rivalry that existed between the localities, and the prolonged struggle which made the selection of a seat of government one of the leading public questions of the day. At the same time there is no record that the method to be adopted for providing for the political rights of a people who, while citizens of the United States, would not be the citizens of any state, was a source of any speculation or entered as a factor into the consideration of the matter. Even in those luminous expositions of the Constitution found

in *The Federalist* this phase is but meagerly touched upon and it is then that Madison rather lamely suggests as a substitute for what would be lost by the change, that Congress might set up a local government. Although the same principle of territorial jurisdiction applied to the land occupied as forts, arsenals and dock yards, yet it was never supposed, and in fact it has never occurred, that these bits of United States soil would become the home of any number of people.

The silence as to what may be termed the political side of this situation was presumably not due either to ignorance or indifference. During the years that intervened between 1790 and 1800 no recorded reference was made, either in or out of Congress, to the effect on the political status of citizens by the exercise on the part of Congress of its power over the seat of government. It must have been well understood that under the Constitution the people of the new territory would be deprived of a direct representation in the government under which they lived and would have no voice in national affairs, and not even in local affairs unless with the permission of Congress. Except making an appropriation to enable the commissioners in charge of the erection of public buildings in the new city to complete that work—the funds of the city having become exhausted—there was not only no further legislation but there is no recorded discussion of the subject. The minds of the people were apparently not agitated as to the relation which this anomalous creation of the Constitution would bear to the states of the republic. It is probable that if such a conjecture arose, it was dismissed with the thought that when the time came some solution would be found. Perhaps, however, even that degree of consideration smacked too much of the academic to be possible in those practical days.

The law of 1790 which accepted the cession of land for the new district from the states of Virginia and Maryland also contained a provision by which the national body began the exercise of its constitutional right. A body of laws and a government for the new territory was supplied by the enactment that the operation of the laws of the states of Virginia and Maryland should "not be affected by the acceptance until the time fixed for the removal of the government thereto and until Congress shall otherwise by law provide." In accepting the jurisdiction of the laws of Maryland and Virginia, the legislatures of both states had their functions continued over the District and during this period of ten years enacted a number of laws with special reference to the territory. At the very outset in its dealings with the District, it will thus be seen, Congress began the policy of delegating its powers of legislation to other agencies, at first broadly and then strictly limited. For the first period they were the legislatures of two states; in later years they were local municipal corporations and a territorial form of government. More than a quarter of a century ago, when the present form of government by commission was established, Congress for the first time began the exercise in its completeness of its constitutional power over the District.

After the enactment of the law of 1790 there is no record of a further step, or an attempt to make one, in the direction of Federal control until the sixteenth of April, 1800, just prior to the close of the last session of Congress held in the city of Philadelphia. At that time the House adopted a resolution providing for the appointment of five members to draw up rules and regulations relating to the District of Columbia. At the head of this committee was Henry Lee, of Virginia,

one of the conspicuous figures of the Revolutionary War. There is no record of a report having been made by that committee. In the fall of the same year Congress met for the first time in the new city. Upon that occasion President Adams, in the course of his address to the House of Representatives referring to the removal of the Government to the new seat, made a significant reference to the political relations of the new District when he said:

"It is with you gentlemen to consider whether the local powers over the District of Columbia, vested by the Constitution in the Congress of the United States shall be immediately exercised." This portion of the address was referred to a special committee and Henry Lee, of Virginia, was named as its chairman. After a consideration of this subject, lasting three weeks, the committee brought in a report based on a construction of the law of 1790 that after the first Monday in December, 1800, the laws of Virginia and Maryland were no longer in force in the District. A bill was therefore reported continuing in force the laws of those states as they existed on the first Monday in December, 1800, and as an additional exercise of the constitutional rights conferred on Congress, it was directed that all executive and judicial officers of the respective states who had jurisdiction over the District on the first Monday in December "should continue to hold and exercise such jurisdiction until removed by the President of the United States." The future appointment of such officers, it was stipulated, should be made by the President in the exercise of his constitutional powers. With a body of laws thus provided, together with a set of Federal officers, and the legislative authority of the states being brought to an end, the District would be directly under Federal control. Its citizens would no longer be

subject to the laws of the respective states and in consequence would cease to be citizens of those states.

This measure was a long step in advance of the position taken by Congress by the law of 1790, as in the latter instance jurisdiction was assumed with a delegation of powers while in the former case the Federal authority was to be supreme. It was explained by Mr. Lee that this measure had been prepared merely to allay the feeling of uncertainty that existed in the District arising from the belief that the jurisdiction of the state laws ceased at the time the District became the permanent seat of government. It was not intended as a part of a permanent system.

The construction placed on the law by the committee that on, and after the first Monday in December, 1800, Congress alone could legislate for the District, that then the Constitution forbade such a function within the District to any other body was not endorsed by the House and the bill was recommitted.

A similar position was taken by the Senate committee which made a report to that body, also recommitted, to the effect that the powers of the states of Virginia and Maryland to legislate in the District have wholly ceased and that the sole power of legislation was then vested exclusively in Congress. As far as the committees of the two houses were concerned the answer to the President's question as to whether the local powers over the District vested by the Constitution in Congress shall be immediately exercised, was decidedly in the affirmative.

It is apparent from the discussion that the difference of opinion between the two houses and their committees was not vital, as it involved the issue of when more direct Federal authority should be exercised, rather than either the character or effect of such authority.

To one who is interested to know the contemporary thought in regard to this grant of absolute power, it is a cause of surprise that in the debate which the report elicited in the House, the question of political rights did not seem to be the important one. For the first time since the adoption of this constitutional provision and the passage of the law establishing the District, the opportunity was presented for considering the subject in all its phases. It is evident, however, that the representatives in Congress regarded as of higher consequence the question of whether on the date named by the committees Congress had or had not assumed in full its constitutional powers over the District. There were, however, those who were opposed to going any further in this direction and they argued that this was one of the powers of the Constitution that could be exercised or not just as the need arose. Others held that Congress had no choice but must make use of this power, especially as it was exclusive and in this respect differed from some of the other constitutional grants. The tendency of the political thought of the day relative to the central government as represented by the two great political parties, was clearly brought out in this discussion. It was contended on the one side that the District could go on as it had for the past ten years without any further intervention on the part of Congress.

Under this arrangement the people of the District, it was argued, had lived happily for the past ten years and they could continue to do so. But if, as is proposed, they are deprived of state citizenship then they become that most pitiable object, a citizen taxed without the right of representation. It is true, said the advocates of the policy of the Federal party, with sharp emphasis, that the people of the District have lived

happily for the past ten years under the state governments yet the provisions of the Constitution on this subject had not been made with this view. It was made to bestow dignity and importance on the government.* "It was undoubtedly," exclaimed another, "the intention of the framers of the Constitution that after this territory became the seat of government no authority but that of Congress should be in force."† The *National Intelligencer,* the organ of the anti-administration or Republican party, in an article entitled "A History of the Last Session of Congress," published April 17, 1801, stated: "The House by a large majority recommitted the bill, thereby expressing an opinion that an assumption by the general government might or might not be made and that until actually made the laws of Virginia and Maryland remained in force."

It is evident that the loss of political rights was an obstacle to several members in the consideration of the measure. In the course of the discussion which took place the thirty-first of December, 1800, and this date might be appropriately called the first District Day in Congress, the future political condition of the citizens of the District under the Constitution was clearly pointed out. It was evident that while not agreeing with the committee in its construction of the law of 1780, a majority of the House, and that was Federal as also was the committee, desired a more definite plan for the government of the District than the very general scheme proposed in the report. In providing a form of government, however slight for the District, Federal authority would take the place of that of the states and the political status of all citizens of the District would be changed. This effect of action by Con-

* *Annals of Congress,* 6th Congress, 1799–1800, p. 873.

† *Annals of Congress,* 6th Congress, 1799–1800, p. 870.

gress was apparently well understood by the law makers. It is quite plain that with a full knowledge, Congress pressed on to the exercise of its powers. So the report was returned to the committee.

With the subject again in the hands of the respective committees, the two houses turned to other topics. There is evidence that during the period when the affairs of the District were being discussed in the committees and on the floors of the respective houses, that the people of the District were not inattentive or silent spectators. The record of popular action and feeling is more meagre than we would like to have it, still there is no doubt that the voice of the people was heard then in the halls of Congress as has been the case with perhaps growing volume and importance during the entire century that has intervened.

Shortly after Congress convened in the new District, namely on the twenty-fifth of November, 1800, the Speaker laid before the House a letter from sundry inhabitants of the District, expressive of satisfaction upon the first meeting of the national assembly at the permanent seat of government. It is apparent that this communication was merely of a congratulatory character and a polite recognition of the presence of Congress. The amenities were pleasantly observed by the reference of the letter to a committee, which duly reported that the sentiments of the inhabitants of the District showed a laudable attachment to the government of this country and sincere solicitude for the accommodation of Congress. No reference was made to the political prospects of the inhabitants. That the people of the District were not oblivious of the critical stage which had been reached could be maintained on general principles of any community of 14,000 souls possessing in similar degree the intelligence and culti-

vation, so characteristic even at this date, of the population at the permanent seat.

However, according to the author of a communication which appeared in the Alexandria *Advertiser* and *Commercial Intelligencer* of January 6, 1801, over the signature of Citizen, "The passive indifference which prevails in this important subject would do honor to the subjects of a Turkish bashaw, but can reflect no credit on the American character or that of the citizens of Alexandria."

"Citizen" suggested the propriety of a public meeting "for the purpose of passing resolutions expressing for the information of Congress the sense of the inhabitants respecting their future government."

"To my mind," he continues, "there appears four queries to arise, on each of which it would be proper to predicate a resolution expressing an explicit opinion."

As a contemporary analysis of the possible political relations between the Federal government and the new territory, these queries are of interest. They are as follows:

"First. Whether a total separation ought to take place between the inhabitants of the District of Columbia and the states of Maryland or Virginia, or whether a modified jurisdiction should be suffered to be retained by each state; and if so under what modification should each jurisdiction be retained?

"Second. Whether if a total separation is deemed desirable the inhabitants ought to lose their weight as a part of the Union or whether they ought to possess such weight; if so how and what modification.

"Third. Whether if a separation is deemed preferable, the district or territory ought to have a local legislation; if so how ought it to be constituted; ought it to sit permanently in the City or alternately in the city of Alexandria?

"Fourth. What judicial plan ought to be adopted if a local legislature is given; is it best to leave it unfettered in this respect and to permit it to organize the judiciary of the whole, as their wisdom shall direct or is it for Congress to attempt this organization?"

To what extent the publication of this communication was influential in bringing about a public meeting, it is of course impossible to judge, but at any rate such a gathering was held January 13, 1801. If one may draw an inference from the evidence offered by a comparison of the sentiments and even expressions in the newspaper communication and of the memorial adopted at the meeting both came from the same source. In the language of this paper submitted at the public meeting the powers of Congress over the District constitute a subject that is "novel in the science of government—it is momentous to those whose lives, liberty and property are implicated in the issue." The serious and weighty objections to the assumption by Congress of its full powers over the District are referred to in this paper which was a clear and ably written statement of the case. Admitting that Congress has the power of exclusive legislation over the District, yet its exercise was deprecated because it would mean the taking away from the citizens of their political rights. It is therefore urged that "if it comports with the present convenience of the Federal government, certain particular subjects of legislation may be assumed without impeaching the general sovereignty and jurisdiction of the states."*

The effect on the political condition of citizens was described when it was asserted that if Congress exercised its powers "we shall be completely disfranchised in respect to the national government, while we retain no security for participating in the formation of even

* *Intelligencer*, February 16, 1801.

the most minute local regulations by which we are to be affected. We shall be reduced to that deprecated condition of which we pathetically complained in our charges against Great Britain, of being taxed without representation." In the same strain and with ideas, and to some extent language which the student of history of the District will recognize as familiar, the paper describes the deplorable condition of District citizenship, in the event Congress proceeds, concluding with the fervent hope that the national body will postpone "the exercise of their powers to their full, till imperious circumstances shall require; but should Congress not think fit to grant this request we earnestly entreat them to delay the full assumption till they shall have devised and matured a competent system of government and published it for the consideration of those who are naturally interested."

It is uncertain from the scanty records that have been preserved whether or not it was this paper which is referred to in the *Annals of Congress* as a memorial from the freeholders of Alexandria presented to that body January 25, 1801, praying it to establish a system of legislation and government for the District. But it is not at all likely that two distinct movements of this kind would have been probable in the then somewhat apathetic condition of public opinion. A few days later, it is recorded, a similar petition was received from the inhabitants and the freeholders of Washington but not until the lack of any expression of opinion on their part had been noticed on the floor of the House. There is no record of the inhabitants of Georgetown expressing their views in this regard.

It will be noticed in both instances, Congress was asked to provide a system of legislation and government, while in the halls of Congress members speaking

in behalf of human liberty and especially of the political rights of the citizens, urged their colleagues not to commit the crime of disfranchising these people by disturbing the existing form of government. The party in Congress opposed to further assumption had, however, sympathizers in Alexandria. It may be significant that at the presidential election in November, 1800, the last national election in which a citizen of the District cast a vote, the Republican electors in the Alexandria district received a majority of votes while in the Bladensburg district, of which Washington was a part, the Federalist ticket carried the day.* The Republican electors were also favored by a majority in the Georgetown district. There seems to be no reason to doubt that politics had some influence on this question as it generally does in all public matters. The Federalist party naturally favored the full assumption by Congress of its powers over the District as tending to give dignity to the central government, while the Republicans were inclined to minimize the national center.

What were the views of the people of the District on this subject may also be gathered from the remarks made in the House by Mr. Craig, of Maryland, whose district included a portion of the territory of the District. He said that, as far as his knowledge of the sentiments of the people of the District extended, and he professed to be pretty well acquainted with their ideas upon the subject, that their feelings, their interests and their desires favored assumption and were opposed to delay.†

While it was evident there was a realization on the part of the residents here of the political situation of the territory, yet there was also confidence that their

* *Intelligencer*, November 12, 1800.

† *Annals of Congress*, 6th Congress, p. 993.

liberties, as well as property interests, could safely be intrusted to Congress. Furthermore, there was apprehension as to the permanency of the city, which increased on hearing the openly expressed dissatisfaction of members of Congress because of the contrasts between the comforts of Philadelphia and the hardships of existence in a new town. The hope of still changing the location of the seat of government had not been abandoned and the friends of rival localities were naturally not friendly to the place selected. No doubt the care for vested interests here in the District had its place in the consideration of this question by the citizens. At the same time the opponents in Congress of further assumption were charged with being hostile to the location of the new District, rather than having a care for the political rights and liberties of its citizens.

It was not, therefore, with the citizens any more than in the halls of Congress, a matter involving only a change in political status. The columns of the *Intelligencer* were made use of to spread abroad information about the situation of the District. During one week (December 24–31, 1800) four essays on "considerations on the government of the District" appeared in that paper written by A. B. Woodward, whose *nom de plume* was Epaminondas. Such was the public interest in the subject that they were almost immediately issued in pamphlet form. The author, Mr. Woodward, was one of the first admitted to the bar of the District, and also was chosen by the citizens of Washington as a member of the first city council, which was elected in June, 1802.

He subsequently was appointed by President Jefferson judge of the newly organized territory of Michigan. He was a man of versatile mind, and his essays on the government of the District, which were eight

in number, while indicating mental powers of rather broad scope, are of a somewhat speculative character. In the stately and rather circuitous fashion more prevalent then in writings intended for popular use than is the case at present, Mr. Woodward discusses the report made by Mr. Lee, and then launches forth in a treatise on a plan of government for the District. He characterizes the Lee measure as unnecessary, and in a later number of the essays speaks of it as "the most silly and ridiculous ever presented to a legislative body."

He makes merry over the idea that, after such a course of preparation by Mr. Lee, referring to his appointment at the last session on the committee to draw up rules and regulations for the District, he has been able to produce such slight results. In a later essay he has more to say of the committee's chairman. A measure of this character, he explains, might be expected from a legislator like Mr. Lee, who, however competent to wield a sword at the head of an army, was not competent to wield a pen in a body of law-givers. In passing, it may be noted, that in this paper which is number five in the series, occurs what is probably the first mention of a code of laws for the District. Mr. Woodward asserts that Mr. Lee proposed framing such a code. Mr. Woodward points out that the only difference between the condition of the District prior to and that following the enactment of the proposed bill would be that then no further legislation could be expected from the state legislatures.

Under the circumstances such a system could only be of temporary duration and he laments that "in the collision and agitation which have attended the presidential election, there has not been found in the public councils a mind sufficiently calm to elevate itself above the storm and to devote some attention to the interests

of the respectable body of people comprehended in the Territory of Columbia and in the city of Washington in particular." Believing, the author states, that a permanent system of government should be devised for the District, he submits some considerations on that topic. This forms the theme of the three following essays. He declares that the subject has been much neglected by members of Congress, a cause of complaint which has existed ever since in regard to District affairs.

In paper No. 2 Mr. Woodward makes the first published suggestion, as far as I am aware, that the District be represented in the national legislature and that it have a voice in the election of a president and vice-president. He asserts with more liberality of thought than the actual practice of those days would indicate prevailed that "it is contrary to the genius of our Constitution, it is violating an original principle in republicanism to deny that all who are governed by laws ought to participate in the formation of them."

The argument used commonly in this discussion, both in and out of Congress based on the asserted rights of the governed to participate in the making of the laws under which they live, appears to be of a rather theoretical nature. For at that day only a small proportion of the people exercised the elective franchise. But the movement towards its freer use had begun, as may be gathered from the discussions on the affairs of the District.

Then, however, a great number of the people had no participation in public affairs and could neither vote nor hold office. It was perhaps the glittering generality of the phrase that attracted rather than its real and practical significance. For when a form of government for the District was reported to the House and

even when a corporation was provided for the city of Washington by Congress, provision was made in both instances to confer upon only a percentage of the citizens of the District the right to have any voice in the making of laws which they were obliged to obey.

An able essay on the pending question appeared at this time in pamphlet form. It was an anonymous contribution signed "A private citizen of the District," to the discussion of the important principle, whether Congress was bound to assume direct jurisdiction over the District. As the result of elaborate reasoning, the writer reached the conclusion that in the first place Congress was not bound to assume, because the constitutional grant of power does not always impose the obligation to exercise that power. In the second place, the acceptance of the District and the removal of the seat of government did not amount to such assumption. As to the expediency of Congress assuming, the writer laid emphasis on the fact that if such a course is pursued, the people of the District would be governed without being represented in the government. He did not admit that the words of the Constitution were imperative and that Congress must exercise its powers whether right or wrong, expedient or inexpedient.

Attention was called to the condition affixed by the states to the cession, namely, that the state laws should continue in force until Congress by law should otherwise provide. When the condition prescribed in the laws of cession is complied with, it is quite clear, the writer pointed out, that the territory of Columbia would cease to be a component part of the states respectively to which it belonged. He predicted what in a short time became the subject on the part of citizens of the District of petitions to Congress, namely, the increase in the expense of the system of jurisprudence when the

District would have to bear the entire burden instead of sharing it, as then, with their neighbors of the counties of Montgomery, Prince George and Fairfax.

He described, with admirable clearness, the status of the District under the Constitution. It can never be a state he said "because the power of exercising exclusive legislation vested by the Constitution in Congress is incompatible with the existence of a state enjoying a legislature." As the citizens of the District, he continued, are not qualified to vote for members of a state legislature they are not qualified under the terms of the Constitution to vote for members of Congress. He characterized the Lee bill as not only unnecessary but as ruinous in its effects on the District because he states "if this law be enacted it is to all intents and purposes a law providing for the government of the District under the jurisdiction of Congress and not only deprives the states of further power to legislate for us, but effectually destroys the jurisdiction of the courts of justice and all the civil officers of the state over the territory and its inhabitants."

In the event Congress should deem it expedient to exercise its power, the writer urged that a system of jurisprudence be provided for the District and such arrangements made as would enable the people of the District to govern themselves. The indefatigable Woodward replies to this argument in an essay, No. 5, which was printed in pamphlet form in Georgetown in 1801. He discusses the abstract question whether Congress must exercise this power and reaches the sound conclusion that as the District has become the seat of government its exercise is obligatory upon Congress. While admitting the disfranchised condition of the citizens of the District under the Constitution, Mr. Woodward concludes that one of two conse-

quences must result—either this provision of the Constitution must be abandoned or attended with insuperable difficulties in the execution, as it is irreconcilable with every principle of American freemen.

This brings him to the solution of the entire problem which is an amendment to the Constitution of the United States, giving the District representation in the national legislature. Mr. Woodward then proceeds to give the details of his plan for the government. It was first published in the *Intelligencer,* December 31, 1800, as an appendix to No. 4 of his essays. One month later the committee of which Mr. Lee was chairman reported to the House a scheme of government. To what extent the action of the committee was influenced by the ideas of Mr. Woodward and those expressed in the current discussion, it is impossible to say.

At any rate a territorial form of government was reported by the committee and that was the form advocated by Mr. Woodward. However, a territorial government was not then a novelty in this country so that the coincidence in this case is perhaps more fancied than real. Woodward's plan in its general outlines, as was also the case with that of the committee, resembled the one which had been provided by the ordinance of 1789 for the government of the northwest territory. He laid no restrictions upon the exercise of the franchise except that of citizenship in the United States and residence in the District. A suffrage provision of this character for that day was the extreme of radicalism. Unrestricted or manhood suffrage was practically unknown in this country until nearly the middle of the century.

While the bill of the House committee was similar in many of the provisions, yet a notable exception was its confining to freeholders, office holding and the exer-

cise of the franchise, following in the latter particular at least the prevailing custom in this country at that time.* The House bill copying a feature of the Federal system had the device of the election of the members of the territorial senate by electors instead of by direct vote of the people. In both measures the interest of the United States in the District was made prominent in retaining in the control of the Federal authorities the executive branch and in reserving to Congress the right to repeal any law of the local legislature or at any time to make any law or regulation for the District.

It is quite clear that this proposed grant of powers to the government to be set up for the District was looked upon by the framers of the House bill as merely a delegation of the powers vested in Congress. As by the law of 1790 Congress gave authority to the states of Maryland and Virginia to exercise jurisdiction in the District, so in this proposed legislation Congress was to hold to the power but to create an agent. An approach to the recognition of the principle which is the underlying one of the present form of government, namely, that of the equal financial responsibility of the general and local governments in the appropriation for meeting the local governmental expenses, was made, perhaps, more fully in the House bill than by that of Mr. Woodward's for the former fixed as charges upon the Federal treasury, the pay of the governor and that of the members of the legislature. Mr. Woodward intended the District to bear the burden of maintaining the legislature—while the governor's salary was to be paid by the general government.

A curious feature of the Woodward bill showing

* A Constitutional History of the American People, by Francis Newton Thrope, p. 97.

apparently the author's faith in the coming grandeur and greatness of the District was the provision for a tract of ground to be vested in the District government and to be used for the location of the necessary local public buildings. As specifically described by Mr. Woodward the proposed site was east of South Capitol street and south of E street southeast.

What was popularly thought of this territorial scheme of government may be gathered, in part, from an elaborate communication printed in the *Intelligencer* in the issues of January 30 and February 2, 1801. The writer, under the *nom de plume* of Washington, gives utterance to that sectional feeling which existed in the District, it appears, practically from the beginning.

There was jealousy between the different sections of the city from the start, friction between the city and county authorities of Washington, and there was also a feeling on the part of the residents of Georgetown against Washington and then the interests of Alexandria appeared to be threatened by both. This discussion of the proposed form of government has none of the philosophic spirit which characterizes the polished essays of Epaminondas. The purpose of the author is to point out some of the practical effects of the proposed territorial system and more especially to show how it would operate against the interests of Washington.

The portion of the bill restricting the exercise of the franchise, the writer maintained, would favor the county as against the three towns, for the reason that values were less in the county than in the cities with the result that land holding was more general in the former than in the latter. As the mass of property in Washington, the reasoning ran on, is held but by a few, the voters would be few and this would result in the entire prostration of Washington. "It was folly,"

the writer added, "to conceal that jealousy already exists. It is a fact that while the property of the citizens is tributary to the coffers of Prince George county, these coffers are never open to her wants however imperious." The new system in the opinion of the writer would not soften or remove these jealousies.

The bill was reported to the House January 23, 1801, but it was not until the third of the following month that it came up for discussion. An effort was then made to postpone the entire subject on the ground mainly that there was no necessity of Congress assuming further jurisdiction over the District at this time. However, this failing, the attack was directed against the bill itself and the criticism was especially sharp that the people were not allowed to choose their own governor and their executive and judicial officers. Attention was called to the fact that no man in the District would be represented in the national government which he contributed to support, "a denial of a natural right." On the other hand it was declared that the local interests of the people would be better represented in the proposed legislature than could possibly be done in similar bodies of the respective states and their affairs would be more carefully considered.

It was pointed out by one of the speakers, a Maryland representative, that he believed the people of the District were desirous that this measure become a law. Owing to the opportunities afforded by their residence at the seat of government and their acquaintance with the members of Congress, the speaker asserted, that their voices would be heard, even though they might not be represented in the national body. In the event that such a step should seem necessary by changing the Constitution a delegate might be given to the District when the population became sufficient. That the people

could not be represented in the general government was admitted by another speaker. But where was the blame if any could attach? Certainly not, he said, to the men who made the act of cession; nor to those who accepted it. It was the men who framed the constitutional provision, who particularly set apart this as a District, under national safeguard and government.*

An indication of the sentiment of the House and as showing the progress made in liberalizing the ideas entertained about the franchise privilege, may be found in the adoption of an amendment extending the suffrage beyond the class of freeholders so as to include housekeepers with property valued at $100. But on the previous day the House had voted down, by a majority of only two votes, a motion to extend the privilege of voting to persons who are not freeholders, which would have been unlimited suffrage.

In the Senate, as stated, a somewhat similar proposition as that first reported by the House committee which was mainly a declaration that the jurisdiction over the District lay entirely with Congress, was submitted from the committee. Like the other branch, however, the Senate evidently did not care merely for a theory and so recommitted the report. The debate, which has not been preserved, no doubt informed the committee of the course to pursue. On the twenty-ninth of January, 1801, amendments to this measure, as they were termed, were submitted to the Senate and a few days later were adopted. The bill thus amended was the same that on the twenty-first of February, 1801, became a law, the main features of which were the provisions for a judicial system for the District and continuing in force the existing laws of Maryland and Virginia.

During the several weeks that the legislative action

* *Annals of Congress*, 6th Congress, p. 996.

relative to the District remained uncertain, some of the citizens were not inactive. There was no uncertain tone in the resolutions adopted at a meeting of the citizens of Alexandria held in that place January 31, 1801.

They asserted that it would be unjust and inexpedient for Congress to assume an exclusive jurisdiction over the District until the people are assured of a representation in that body. As such a result could only be attained through a constitutional amendment, as pointed out in one of Mr. Woodward's essays printed in the *Intelligencer* and therefore given currency in the District, it is evident that those endorsing these resolutions did not esteem it important that there should be at this time, further assumption by Congress. The resolution also affirms that the bill lately reported to Congress for the government of the District, referring, of course, to the committee's territorial bill, "is not calculated to produce any good effect to the people of the District and is an express contradiction to some of their most important rights."*

Another portion of the resolution furnishes an interesting contribution to the study of the suffrage movement, for this meeting of citizens of Alexandria gave as one of their objections to the pending measure that the provision contained therein for the exercise of the right of suffrage was not broad enough. The particulars in which a change was desired are not indicated but in a note to the report of the meeting, added evidently by the editor of the *National Intelligencer,* the astounding statement is made: "We understand the extension contemplated is a universal suffrage without respect to qualification."

Such advanced views, especially if they were held by any number of citizens of Alexandria, justifies the

* *National Intelligencer*, February 6, 1801.

inference that the legislature of the state was not, in this respect at least, a representative body. For at that time the charter of Alexandria permitted only property holders to vote, conforming in this particular to the law, not only in that state, but in most of the states of the Union. A few years later when Congress gave the town a new charter these limitations were not removed.

In fact the national body followed a conservative policy in regard to the elective franchise in the District. When a new charter was granted to Georgetown in 1805 only property holders were permitted to vote, while the act of incorporation of Washington of 1802 strictly confined the privilege within the same limits. Congress refused to relax these local requirements until about the middle of the century although the first city council, by unanimous vote, memorialized that body "to extend the right of suffrage to every citizen of legal age who had been a resident six months."*

At a subsequent meeting of Alexandria citizens held February 9, a memorial to Congress embodying the views as set forth in the resolutions presented at the former meeting was adopted. In this paper objections were urged against the territorial bill. That scheme of government was opposed because in the first place, it was asserted, while Congress had undoubtedly the right to make the laws for the District, yet as the people of the District are not represented in that body, the exercise of such a right constitutes a despotism.

The national legislature was reminded that every power granted by the Constitution is tacitly accompanied by the condition that it shall be exercised in a manner consonant with general rights. Furthermore, Congress was informed that however sanguine the

* *National Intelligencer*, December 24, 1802.

memorialists might be of "the benefit to be derived from the assumption of the exclusive right of legislation over the territory, they are not willing to barter for advantage, the rights which they conceived to be dearest to them as men."

This is only a paraphrase of the more familiar phrase "selling one's birth right for a mess of pottage," but it occurs in varying forms not only in the discussions on the government of the District at the beginning but throughout its history. The abstract force of the reasoning relative to human rights was recognized, then as now. At the same time during the century passed no substantial progress has been made in divesting the general government of all, or a part, of its powers over the District, or of changing the political status of its citizens. It is apparent that theoretically the people of the District might be classed politically, as was done both in and out of Congress, as a community of slaves. Practically such considerations did not seem to have as much weight with the residents at the nation's capital as their confidence that their prosperity and happiness could safely be entrusted to the national legislature to which had been given the custody of the interests of the nation in the seat of government.

The comment of the *National Intelligencer* in its "History of the Last Session of Congress," published April 22, 1801, in regard to the District territorial bill may probably be regarded as affording some suggestion of the tendency of public opinion of the day; although it may be inferred from the advocacy of another territorial measure at the next session that the editor's idea relative to suffrage did not go so far as to favor removing all limitations upon its exercise.

After describing in outline this measure, which was published in full in the issue of January 30, 1801, the writer adds:

"Such are the features of a bill, perhaps the most extraordinary that the annals either of Federal or state legislation present, since the era of American independence. Under the specious mask of imitating the constitution of the United States, it subverted the pillar of that instrument by limiting the right of suffrage and of being elected to office to citizens possessed of freehold property. . . . It will not be surprising that such a bill received the vigorous opposition in every stage of the republican side of the House, but it is surprising that its most pernicious provision should receive the zealous support of a majority of the House which demonstrates the extreme length to which party spirit incited with power will go, even to the sacrifice of a vital principle of liberty.

"Notwithstanding the decided and persevering opposition given to this measure it seemed likely to survive it, when the Senate agreed to a bill which they sent to the House, passed on different principles and from different motives. This bill avoided the organization of a legislature, but prescribed the establishment of a court consisting of three judges to be appointed by the President and of a board of justices and to the latter the right of taxation and of police was confided. To this system the federal side of the House was compelled, in despair of obtaining any other, reluctantly to submit, and it passed into a law."

The law of February 21, 1801, which was the outcome of this first consideration given in Congress to the problem of providing a government for the District, must have been a disappointment to many. In some respects it was intended to be a temporary measure and was so regarded at the time. As compared with the more elaborate system which gave place to it in the House, such a provision for government seems inadequate. As in nearly all matters of legislative action which show the cleavage of strong party spirit, it was a compromise pure and simple. The Federalist party was obliged to abandon its purpose of elevating the seat of govern-

ment to a position that some no doubt hoped would ultimately be on a par with that of the states of the Union, while the Republican party fell back from the position that Congress should go no further in its assumption of its constitutional powers over the District, than that of the law of 1790 and that the legislative authority of the states should be continued within the District.

The law of February 21, 1801, embodies the same principle as the bill first reported by the House committee. In both instances the existing laws of Virginia and Maryland were continued in operation and the further legislative authority of the states within the District was ended. The direct control of the Federal authority was established by both measures, while the new law provided United States judges and officers instead of attempting the impossible, as was done by the Lee bill, namely the making use of this part of the governmental machinery of the states. At the next session Congress did not yield to the renewed efforts in behalf of a territorial form of government.

As both Georgetown and Alexandria possessed municipal governments and the counties of Washington and Alexandria were governed by the levy and county courts, respectively, the city of Washington was the only part of the entire District without adequate governmental machinery. Congress the next year merely supplied this lack and did nothing more. No experiments were attempted, but a corporate form was bestowed such as was common in that section of the country. The enactment of the law of February 21, 1801, marks the close of the initial period in the history of the government of the District. It is an act of great significance, as by it the constitutional powers were more fully and directly assumed.

The local governmental agencies existing in the territory when it came under the Federal control were allowed to continue in operation and these with direct legislation by the national body and the corporation provided for the city of Washington constituted the government of the District which continued practically unchanged for a period of nearly seventy years. As it turned out, therefore, the legislation so far as it failed to provide a frame of government was not as temporary as it was thought to be at the time.* This was, no doubt, due mainly to two circumstances, one was the slow growth of the population of the District, and the other the opposition to exalting the importance and value of the nation's capital.

This latter tendency marked the policy of Congress towards the District for some years and is not unknown at the present day. It was manifested, notably in the early days, by attempts to cede back to the states the territory constituting the District, either in whole or in part. A phase of the relation of the District to the general government which attracted attention at that early period and has not ceased to be the theme of discussion in the District and of petitions to the national legislature, was the disfranchised condition of the people of the District under the Constitution.

As the foregoing account shows, the right of the governed to have a voice in the making of the laws which they are expected to obey was proclaimed to be a natural right. Congress was informed that the very principle for which the war of the Revolution had been fought was being violated in the District. Yet, in spite of such protests and representations, the residents of the District, by action of Congress in the exercise of its constitutional powers, lost their citizenship in

* *National Intelligencer*, May 7, 1802.

the states of Virginia and Maryland. The citizens of Washington for the first year had no voice in the management of even their local affairs but were governed by the levy court composed of justices of the peace appointed by the President and by the federal officers termed commissioners.

When the city was granted a charter the following year by a congress, controlled for the first time by the republican party, the powers conferred were limited and the executive officers were not elected by the people but were appointed by the President.

From time to time as the years went by the scope of the three municipal governments was broadened. Congress, however, continued to refuse to delegate its powers of legislation over the District to a legislature, as it had done in 1790 to the legislatures of the two states and as it did seventy years later to the government of the territory of the District of Columbia.

As is well known to even a cursory student of the history of the District the relations between the general government as represented by Congress and the District especially in their purely governmental aspects have at times called forth spirited and emphatic protests both from members of the national body and from citizens of the District. As an example of one of the earliest expressions of this kind on the part of the latter are the comments of the editor of the *Intelligencer* in the issue of August 4, 1802. It was at the close of the session which had witnessed a failure in the revival of the first effort to induce Congress to give the District a territorial form of government.

He says:

"The situation of the District ought not to be dismissed without remark. Her degraded political condition exhibiting the humiliating spectacle of a body of citizens deprived of

all their political rights in the midst of a nation glorying in its freedom, claims the attention of the legislature and of the people. Even should the principle in its present limited application be considered harmless, it ought to be remembered that it furnishes a precedent for more extensive encroachments upon political rights. It is far from being harmless. A government surrounded by twenty thousand slaves, dependent upon its bounty can answer no good end, while it may issue in effects alarming to the general freedom."

Almost a year later, February 21, 1803, a writer in the *Intelligencer,* discussing another territorial bill which was then pending in Congress, points out the inadequacy of such a method of providing for the political rights of the citizens. He states that the people ought not to be satisfied with a territorial legislature under the direct and constant control of the President and under the control of Congress.

"They will not be satisfied," he adds, "however as a sugar plum it may please the infant, the man will claim a stronger aliment. Equal rights held at the caprice of no man will only satisfy him. It is in vain, then, to temporize. The Constitution must be altered."

He further opposed the agitation of the question of the proposed form of government at this time, "as it may paralyze the effort that is being made to secure emancipation from our present thraldom."